SUBCOMMITTEE ON SB 378 RECOMMENDATIONS TO THE LFC ON STATUTORY APPROPRIATIONS AND DEDICATED REVENUES

A Report Prepared for the

Legislative Finance Committee

by

Lorene Thorson, Senior Fiscal Analyst

September 20, 2000

Legislative
Fiscal
Division

INTRODUCTION

Statute directs the Legislative Finance Committee to establish procedures to facilitate a biennial review and evaluation of statutory appropriations to determine if the appropriation should be made by legislative appropriation. In addition, the committee must establish procedures to facilitate a biennial review and evaluation of dedicated revenue provisions to determine whether the money should be de-earmarked and deposited to the general fund. Upon completion of these reviews, the committee is to report its findings to the legislature.

The LFC appointed a subcommittee to make recommendations on statutory appropriations and state special revenue accounts. The subcommittee chose to narrow its review in the 2001 biennium to the analysis of statutory appropriations added by the 1999 legislature and state special revenue accounts where the revenue source is fines or forfeitures. This report contains the subcommittee's recommendations.

STATUTORY APPROPRIATIONS

For a statutory appropriation to be valid: 1) it must be in the list in section 17-7-502, MCA; and 2) the law making the statutory appropriation must state it is made under that section. The number of sections have varied from 42 in the 1987 biennium to 95 in the 1995 biennium and are currently at 69 for the 2001 biennium. Five new statutory appropriations were approved by the 56th legislature in the following bills:

- HB 69 – the LFC bill resulting from the 1999 interim SB 378 Subcommittee work. It revised the laws governing statutory appropriations and dedicated revenue.
- HB 72 - an act providing a statutory appropriation of general fund to the pension trust fund for a guaranteed annual benefit adjustment for recipients in the teachers' retirement system (19-20-604, MCA)
- SB 18 - an act enabling Montana agricultural commodity groups to adopt commodity checkoff programs for the purpose of conducting commodity research and market development programs (80-11-518, MCA). The proceeds of all commodity assessments, penalties, gifts, grants, and donations to the department for commodity research and market development are statutorily appropriated to the department.
- HB 260 – an act to encourage economic development via investment in research/commercial projects (15-34-115 and 90-3-1003, MCA). The bill statutorily appropriated coal producer's license taxes to support research and commercialization centers and to be used as matching funds. It also statutorily appropriated revenue from the coal producer's license tax to pay debt service on outstanding bonds issued to finance renewable resource projects and to finance loans to local governments for infrastructure projects.

HB 260 was declared unconstitutional and therefore the two statutory appropriations created by that bill will be removed from statute. During the 2000 special session, the legislature approved two new statutory appropriations in HB 1- an act implementing the programs that were not funded because of the invalidity of HB 260. The first statutory appropriation in HB 1 annually appropriates the interest income from $140.0 million of the coal severance tax permanent fund that is deposited in the general fund for several economic development programs. The second statutory appropriation appropriates $425,000 for each biennium from the treasure state endowment special revenue account. The appropriation is to provide communities with grants for engineering work for projects approved by the legislature. The SB 378 Subcommittee did not review these new statutory appropriations following the 2000 special session.

ADVANTAGES/DISADVANTAGES

Statute provides for three types of appropriations: 1) temporary appropriations enacted by the legislature as part of designated appropriation bills or sections designated as appropriations in other bills; 2) temporary appropriations made by valid budget amendment; or 3) statutory appropriations made by permanent law. Appropriating money in law (a statutory appropriation) can be extremely effective for two reasons: 1) certain funds are identified and earmarked for a specific purpose and cannot be used for another purpose; and 2) the money is permanently and continually appropriated in statute. This eliminates the need to obtain HB 2 appropriations every biennium. However, the legislature's authority to appropriate funds is one of its greatest powers. This control is diminished by the use of statutory appropriations. Statutory appropriations can provide benefits to the legislature, but they also have disadvantages. Attachment A lists the benefits and disadvantages of statutory appropriations.

SUBCOMMITTEE RECOMMENDATIONS

The subcommittee reviewed all new, valid statutory appropriations added by the 1999 legislature and made no recommendations for changes to these appropriations. At the request of the Hard-Rock Mining Impact Board, the subcommittee reviewed the 1999 legislature's elimination of the statutory appropriation that transferred to counties all money in the hard-rock mining impact trust account, following the allocation to the hard-rock mining impact trust reserve account (90-6-331, MCA). The subcommittee recommends that the statutory appropriation for 90-6-331, MCA, eliminated by the 1999 legislature be reinstated. The current subcommittee made this decision to ensure that counties receive all money in excess of the allocation to the hard-rock mining impact trust reserve account in the state's hard-rock mining impact trust account.

Attachment B is a copy of the Information and Action Form used by the SB 378 Subcommittee during the 1999 interim to make its recommendation to eliminate this statutory appropriation. Attachment C is a copy of a letter from Carol Ferguson, Administrative Officer of the Hard-Rock Mining Impact Board, requesting reinstatement of this statutory appropriation.

LFC Options:
1. **Reinstate the statutory appropriation.**
2. **Do not change current law.**

DEDICATED REVENUE

The SB 378 Subcommittee chose to narrow its review in the 2001 biennium to the analysis of state special revenue accounts where the revenue source is fines or forfeitures. Statute defines revenue from fines and forfeitures to be a "general revenue source" and statute states that programs funded through dedicated revenue provisions for "general revenue sources" must be reviewed to the same extent as programs funded from the general fund. For that reason, if the money is from a general revenue source but only benefits a select group of people, the legislature needs to determine whether the money should be de-earmarked and deposited to the general fund. The function is then funded with general fund money and competes with all other functions funded from the general fund.

SUBCOMMITTEE RECOMMENDATIONS

The subcommittee reviewed several accounting entities where the revenue from fines and forfeitures was so minimal that the subcommittee determined that the funds were not worth de-earmarking, but should be monitored in future biennia. However, information on four accounts follows where the subcommittee recommended the de-earmarking of fine and forfeiture revenues.

One of the guidelines for revenue dedication provided in 17-1-505, MCA states: "The program or activity funded provides direct benefits for those who pay the dedicated tax, fee, or assessment, and the tax, fee, or assessment is commensurate with the costs of the program or activity." The subcommittee determined that the fine and forfeiture revenue of accounting entities 02162, 02451, and 02143 does not meet this guideline and recommended de-earmarking of the fine and forfeiture revenue to the general fund. The revenues would be replaced with general fund appropriations so there would be no impact to the programs during the 2003 biennium.

Account: 02162 Environmental Quality Protection **Agency:** Environmental Quality
Revenue Provision: Cost Recovery/Transfer of Interest **MCA:** 75-10-704
Purpose: Interest earnings from RIT, penalties, and cost recoveries to fund remedial action when natural resources are damaged.
Analyst's Comments: Account receives cost recover revenue and revenue from interest earning from the RIT (6% of total).
Subcommittee Recommendation: De-earmark all penalty revenue to the general fund.

LFC Options:
1: Adopt the subcommittee's recommendation on de-earmarking revenue from penalties.
2: Take no action

Account: 02451 Reclamation Hardrock **Agency:** Environmental Quality
Revenue Provision: Misc. Fines/Strip Mine L&P **MCA:** 82-4-311
Purpose: Research, reclamation, and revegetation of land and rehabilitation of water affected by any mining operations.
Analyst's Comments: RIT supplements the activities funded by this account. Appropriations for the 1999 biennium are in the Permitting and Compliance Division. All fines under reclamation are to be deposited in the account. Revenue in fiscal 1999 was $17,750 ($8,950 from civil penalties). Available fund balance was over 1,100% of fee revenue.
Subcommittee Recommendation: De-earmark all fine and penalty revenue.

LFC Options:
1: Adopt the subcommittee's recommendation on de-earmarking revenue from fines and penalties.
2: Take no action

Account: 02143 Drug Forfeitures-State **Agency:** Justice
Revenue Provision: Misc. Fines **MCA:** 44-12-206
Purpose: To account for forfeitures resulting from violation of controlled substance laws.
Analyst's Comments: Law changed by 1999 legislature where first $125,000 received goes to this account, then ½ of the fine revenue goes to the general fund and ½ to this account. The $125,000 is statutorily appropriated and expenditures exceeding $125,000 require a budget amendment.
Subcommittee Recommendation: De-earmark all forfeiture revenue to the general fund.

LFC Options:
1: Adopt the subcommittee's recommendation on de-earmarking revenue from forfeitures.
2: Take no action

Accounting entity 02495 uses the proceeds of forfeited property for personnel training or enforcement in the Department of Livestock. The subcommittee recommends de-earmarking this account because funds are small and cannot be estimated and general fund can be appropriated if the legislature deems that personnel training and enforcement are needs of the department.

Account: 02495 Training or Enforcement **Agency:** Livestock
Revenue Provision: Misc. Fines **MCA:** 81-5-111
Purpose: Proceeds of forfeited property used for personnel training or enforcement.
Analyst's Comments: Forfeitures are used to provide training to personnel. The revenue from forfeitures is small and not estimable.
Subcommittee Recommendation: De-earmark all forfeiture revenue to the general fund.

LFC Options:
1: Adopt the subcommittee's recommendation on de-earmarking revenue from forfeitures.
2: Take no action

ATTACHMENT A

ADVANTAGES:

1. *Unpredictable revenue source* – The legislature may earmark a revenue source for a specific purpose. Because the amount of revenue may vary greatly due to unpredictable events, it also statutorily appropriates the money. By doing so, the legislature doesn't have to include a highly uncertain amount in HB 2 each session. An example is the use of property forfeitures for drug law enforcement.
2. *Reoccurring obligations* – Due to actions of past (and future) legislatures, obligations to pay may have been (will be) incurred. Knowing this, the legislature statutorily appropriates the funding needed to pay the obligations rather than budgeting them each session. Examples include the statutory appropriation to pay the "principle, interest, premiums and costs of issuing, paying and securing all bonds, notes, or other obligations. . .".
3. *Unpredictable events/costs* – The legislature knows that certain unpredictable events may occur that would require payment of costs 9deemed justifiable by the legislature in advance of the event itself). It then statutorily appropriates money to pay that cost, if it is incurred. Sometimes it is limited by a maximum amount. Examples are hail damage insurance payments and emergency payments, such as control of wildfires.
4. *Ease of accounting* – Although transfers of certain funds may not require appropriations, the transfer may be appropriated by statute to ensure proper tracking. An example is distribution of premium taxes to retirement funds.
5. *Guaranteed program funding* – when starting a new program the legislature may wish to provide a statutory appropriation to ensure a source and/or level of funding. The revenue source is often earmarked revenue from new fees or taxes or from changes in existing fees or taxes. An example is the lodging facility use tax for tourism promotion.

DISADVANTAGES:

1. *No legislative review and prioritization* – Once in place, statutory appropriations remain in law until the statute is amended or repealed. Statutory appropriations, unlike temporary appropriations, do not automatically receive periodic legislative scrutiny or prioritization. Past legislatures had their own program and funding priorities. But these may differ from those of the current or future legislature because of changing circumstances.
2. *Program expansion* – Sometimes a program has a statutory appropriation to spend all of the money from a particular revenue source. Program growth is then only limited by the amount of revenue received. The legislature has no oversight or approval of the growth. In contrast, programs that receive temporary

appropriations are limited by the lesser amount of: 1) the appropriation; or 2) the revenue.

3. *Double appropriations* – Sometimes a program with a statutory appropriation receives a temporary appropriation from the legislature. The potential exists for the program to transfer its temporary spending authority to other programs and then get its own authority through the statutory appropriation. The legislature should not appropriate funds in HB 2 that are already statutorily appropriated. As an example, the 1995 legislature did not appropriate lodging facility use tax revenue in HB 2 even though the executive requested it.
4. *Budget comparisons* – Since some statutory appropriation amounts cannot be easily predicted the true size of the state's budget can not be accurately predicted.[1]

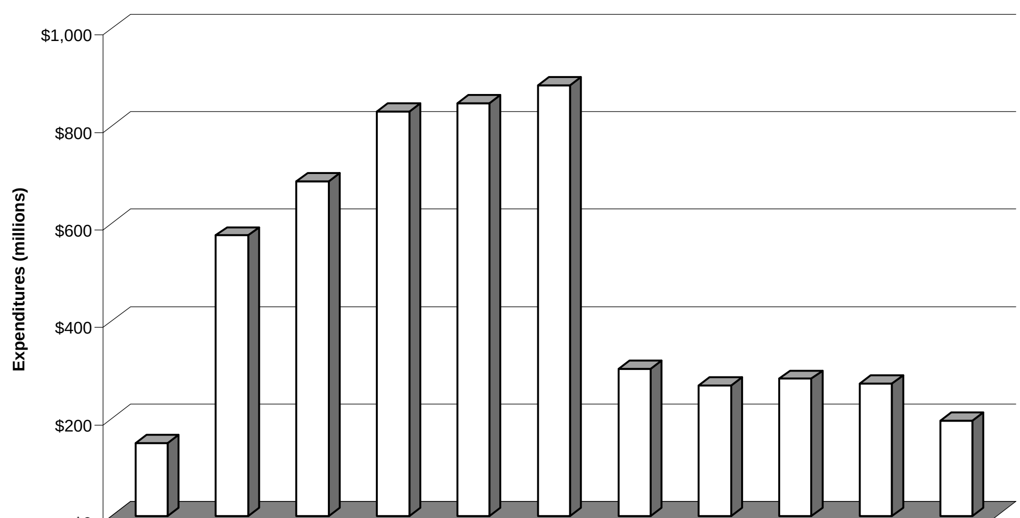
[1] "Recommendations to the LFC on Statutory Appropriations", Roger Lloyd, June 13, 1996.

APPENDIX 1

HISTORICAL EXPENDITURES

Chart 1 illustrates expenditures of statutory appropriations since 1990. As shown in the chart, expenditures dropped from $884.0 million in 1995 to $302.0 million in 1996 when the 1995 legislature eliminated $419.3 million in statutory appropriations, including the school equalization fund. The 1999 legislature eliminated the statutory appropriation of all monies deposited in the state fund, 39-71-2321, MCA. This elimination is reflected in the decreased expenditures of statutory appropriations in fiscal 2000 of over $76.8 million.

Chart 1
Valid Statutory Appropriations
17-7-502, MCA



	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
Stat. Expend.	$150	$576	$687	$830	$847	$884	$302	$268	$282	$272	$196

Year